

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
)
V.)
)
)
RICHARD FLEMING,)
)
)
Defendant.)

4:07CR3005

ORDER

This matter comes to me on an appeal. I conclude that the Magistrate Judge's determination that Dr. Fleming can afford to hire his own lawyer is clearly erroneous.

The rule is that any doubt as to a person's eligibility for appointment of counsel are to be resolved in a defendant's favor. Here, the *present* income string of the defendant, coupled with the defendant's debt load, causes me to doubt whether he could fund the hiring of a lawyer to litigate this complex matter. Therefore,

IT IS ORDERED that:

- (1) The appeal from the Magistrate Judge's order (filing 19) is sustained;
- (2) The Magistrate Judge's order (filing 15) and order on reconsideration (filing 17) are reversed;
- (3) The Federal Public Defender shall continue to represent the defendant. It being understood that the court reserves the power to require the defendant to pay the costs of his defense at a later time should that become appropriate.

April 11, 2007.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge